

The Veto Issue and the Unavoidable Need for Security Council Reform

La cuestión del veto y la ineludible reforma del Consejo de Seguridad

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Abstract

The Security Council is the most powerful organ of the United Nations. The U.N. Charter assigned it the primary responsibility for the maintenance of international peace and security and its decisions are legally binding for the entire membership. However, its current composition of 15 members, five of whom are permanent, is not representative of the 193 U.N. member States. This, together with the privileges of the permanent members, including the possibility of exercising a veto in decision-making, makes it imperative to reform the Security Council to ensure its representativeness, efficacy, and transparency so that it can fulfill its mandate.

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Resumen

El Consejo de Seguridad es el órgano más poderoso de la ONU. La Carta de las Naciones Unidas le asigna la responsabilidad primordial de mantener la paz y seguridad internacionales y sus decisiones son vinculantes para toda la membresía. Sin embargo, su actual composición de 15 miembros, 5 de los cuales son permanentes, no es representativa de los 193 Estados miembros de la ONU. Lo anterior, aunado a los privilegios de sus miembros permanentes, incluida la posibilidad de ejercer un veto en la toma de decisiones, hace impostergable una reforma del Consejo de Seguridad que garantice su representatividad, eficacia y transparencia para que pueda cumplir con su mandato.

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Keywords

Veto, Security Council, United Nations, reform, transparency, accountability

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Palabras clave

Veto, Consejo de Seguridad, Naciones Unidas, reforma, transparencia, rendición de cuentas

The Veto Issue and the Unavoidable Need for Security Council Reform

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Introduction

In accordance with Article 24 (1) of the Charter of the United Nations, the Security Council has “the primary responsibility for maintaining international peace and security,” while the member States of the Organization, by conferring on it this responsibility, recognize that it acts on behalf of all of them. However, it is undeniable that the Security Council is not currently representative of an organization that has grown from its 51 founding members in 1945 to 193 States today.

Meanwhile, the veto remains the leading factor that calls into question the effectiveness and efficiency of the Council. The word *veto* does not appear in the United Nations Charter; this refers to the provisions of Article 27 (3) of the Charter, which establishes that, for the Council to take a substantive decision (procedural matters are not subject to veto), 9 affirmative votes are required, including the affirmative votes of all permanent members (P5). Abstentions are not considered, in practice, as vetoes. This has been the interpretation of the International Court of Justice (ICJ) in this regard, which has prevailed to date.¹

¹ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (1970-1971)*, Advisory Opinion, ICJ Reports (1971), p. 16, para. 22.

This means that the veto is exercised when a draft decision of the Security Council has the majority required for its adoption, that is, at least 9 affirmative votes, but receives a vote against from any of the P5.²

This article addresses both the veto and the need for comprehensive reform, in order to improve the representativeness, transparency, effectiveness and efficiency of the Security Council. The Council's decisions must have the necessary legitimacy to meet the current peace and security challenges of the international community as a whole, which it is obliged to represent.

The veto: fatal mistake

Much has been written about the Council's P5 veto: from its origins in the discussions during the Yalta Conference in February 1945, to the way in which this resource has been used and abused, to the point of calling into question the effectiveness of U.N. action to prevent and sanction any threat to peace, breakdown of peace, or act of aggression. The starting point for any discussion about the veto is this: it is necessary to understand that the veto was the requirement *sine qua non* for the establishment of the U.N. Without a veto, there would be no Organization. The argument put forward for this was clearly set out in the Joint Declaration of June 7, 1945, in which the four States promoting the veto (China, the United States, the United Kingdom and the Soviet Union) indicated:

In view of the primary responsibilities of the permanent members, they could not be expected, in the present condition of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they had not concurred. Therefore, if a majority voting in the Security Council is to be made possible, the only practicable method is to provide, in respect of nonprocedural decisions, for una-

² China, the United States, the Russian Federation, France and the United Kingdom.

nimity of the permanent members plus the concurring votes of at least two of the non-permanent members.³

The “veto” thus made it possible to leave behind the system of unanimity used by the League of Nations.⁴ However, despite recognizing it as a “necessary evil,” developing States were always clear that this formula contained the seeds of the Council’s paralysis.

In 1997, the discussions of the open-ended working group of the General Assembly, which we will refer to in more detail in the section on Security Council reform, put forward the following point: “The view held by an overwhelming majority is that the veto is anachronistic and undemocratic and should be eliminated in a modernized United Nations”.⁵

This has always been the position of Mexico, which opposed the veto at the San Francisco Conference. In the first General Assembly in 1946, Francisco Castillo Nájera indicated that the veto does not offer any incentive to negotiate or reach agreements and that it is, on the contrary, the risk of not achieving the necessary votes that drives delegations to seek agreements and maintain unity.⁶ This continues to be Mexico’s position on the matter. In its intervention before the General Assembly on April 26, 2022, Mexico reiterated the following:

As we all know, the veto prevents action, does not promote the unity of the Security Council, and does not promote the search for collective understanding. The veto has become the most outrageous

³ “Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council,” in Bruno Simma *et al.* (eds.), *The Charter of the United Nations: A Commentary*, vol. 1, Oxford, Oxford University Press, 2002, p. 522, para. I-9.

⁴ Covenant of the League of Nations, Article 5, in <https://www.ungeneva.org/en/about/league-of-nations/covenant> (date of access: June 8, 2023).

⁵ “Conference Room Paper by the Bureau of the Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council,” A/AC.247/1997/CRP.8, May 29, 1997, para. 9.

⁶ Quoted in Bardo Fassbender, *A Security Council Reform and the Right of Veto: A Constitutional Perspective*, The Hague, Kluwer Law International (Legal Aspects of International Organization, 32), 1998, p. 166, no. 8.

aspect of the power of one, since the exercise of the veto always reveals the weak position of someone who has failed to persuade others through reason. Blocking the will of others is the last resort when arguments fail. Therefore, whoever wields the veto does not offer solutions, but simply obstructs action. In other words, whoever resorts to the veto prefers to prevent any movement at all, instead of addressing a problem with a view to solving it. Whoever uses the veto takes refuge in the interposition of an insurmountable obstacle when the route of action targeted by the veto is contrary to their interests, though not to the interests of the international community as a whole.⁷

The fact is that the veto has been used 308 times.⁸ When it is exercised, it is not only the Council that grinds to a halt. The actions of the entire membership, delegated to the Council, are affected by the decision of one or more of the P5. This is why reviewing this issue is of such importance.

The veto during Mexico's participation in the Security Council

During Mexico's last participation in the Security Council (2021-2022), we had first-hand experience of the use of the veto by two permanent members: Russia and China.

However, it is evident that the threat of recourse to the veto by any of the P5 negatively conditions the entire process of negotiating resolutions within the Council and lowers, from the outset, the expectations of its promoters.

⁷ Permanent Mission of Mexico to the United Nations, "Intervención de México en el marco de la adopción de la resolución sobre la iniciativa del veto," April 26, 2022 [p. 2], at <https://mision.sre.gob.mx/onu/index.php/eventos/1725-26-de-abril-2022-intervencion-de-mexico-en-el-marco-de-la-adopcion-de-la-resolucion-sobre-la-iniciativa-del-veto> (date of access: June 8, 2023).

⁸ See U.N., "Security Council Data-Vetoes Since 1946," in Peace and Security Data Hub, June 20, 2023, at <https://psdata.un.org/dataset/DPPA-SCVETOES> (date of access: June 20, 2023).

In the case of Mexico, during the negotiation process of resolution 2616 (2021),⁹ concerning full compliance with small arms and light weapons embargoes in peacekeeping operations, a great deal of diplomatic work was necessary to avoid Russia using its veto. In fact, the scope of the resolution was limited from the beginning as a result of this consideration. This also happened in the case of resolution 2663 (2022),¹⁰ also of Mexican penhold-ership, regarding the renewal of the mandate of the 1540 Committee, on the non-acquisition of weapons of mass destruction by non-State actors, in the event of a Russian veto.

It should be noted that the P3¹¹ are the main authors or drafters of the largest number of Council resolutions, so the risk of a veto generally lies in the positions of Russia and China—even though the United States has used the veto more often than China.

During the 2021-2022 period, six vetoes were presented in the Security Council on five occasions: two related to the recent war in Ukraine, one on new missile launches by the Democratic People's Republic of Korea (DPRK), another on the humanitarian situation in Syria, and one more on the effects of climate change on peace and security. In all these cases, the veto reflected an abuse of power with respect to the will of the majority of States, not only in the Council, but in the General Assembly itself, whose member States often co-sponsor Council initiatives. A clear example is the latter, which occurred on December 13, 2021, when Russia vetoed draft resolution S/2021/990 presented by Ireland and Niger on security and climate change. This project was co-sponsored by 113 U.N. members, including Mexico. However, in an act of defiance of the collective conscience, Russia vetoed a project that had the support of more than half of the membership that the Council is, in principle, supposed to represent.

⁹ S/RES/2616(2021), December 22, 2021, at <https://digitallibrary.un.org/record/3952180> (date of access: June 8, 2023).

¹⁰ S/RES/2663(2022), November 30, 2022, at <https://digitallibrary.un.org/record/3996316> (date of access: June 8, 2023).

¹¹ United States, France and the United Kingdom.

The veto regarding the humanitarian crossing in Syria was the result of diplomatic pressure on Russia by the P3. The issue centered on the renewal of the Bab Al-Hawa border crossing for the provision of humanitarian assistance to Syria. The majority of Council members, and in particular the P3, favored a 12-month renewal, taking into account the need for predictability in humanitarian operations, especially during the winter period in Syria. However, Russia would only accept a renewal for six months, which put the continuity of these operations at risk at a time of high vulnerability. As part of the P3's push to demonstrate that there must be a cost to Russia for meeting its demands, a draft containing the 12-month extension was submitted to the Council for consideration on July 8, 2022, in order to force the Russian veto. Once that political cost was paid, the new text was agreed upon, which was adopted the following Tuesday, at the first opportunity within the Security Council agenda, as resolution 2642 (2022),¹² renewing the crossing for a period of six months. This could have happened from the outset, avoiding a veto, given that the result was going to be the same. But political power dynamics played a major role in the use of the veto.

In the case of the DPRK, the main actor with particular interests was China, which has been more proactive in recent times in seeking to reduce and/or eliminate the sanctions imposed on that country.

Without a doubt, the cases in which the abuse of the veto was most evident, with a high level of impunity and with no cost in terms of accountability, were the Russian vetoes regarding its own aggression against Ukraine. It is a principle of international law, recognized in the jurisprudence of the Permanent Court of International Justice,¹³ that no one can be judge and party in their own case. Indeed, Article 27 (3) of the Charter of the United Nations itself recognizes this premise by stating that “in decisions under Chapter VI and under paragraph 3 of Article 52, a party

¹² S/RES/2642(2022), July 12, 2022, at <https://digitallibrary.un.org/record/3980717> (date of access: July 8, 2022).

¹³ “*Nemo debet esse iudex in propria sua causa*,” See Permanent Court of International Justice, Article 3, Paragraph 2, of the Treaty of Lausanne (*Frontier between Turkey and Iraq*), Advisory Opinion of 21 November 1925 (Series B, No. 12), The Hague, Publications of the Permanent Court of International Justice, 1925, p. 32.

to a dispute shall abstain from voting.” However, decisions taken under Chapter VII are excluded from this consideration, which opens the door to cases such as the current paralysis in the face of the crisis in Ukraine. This led to the Council itself¹⁴ calling for a special period of emergency sessions of the General Assembly through the mechanism of the “Uniting for Peace” resolution.¹⁵

Initiatives to limit the use of the veto

The veto is, by its very definition nature, both the origin and immediate cause of the abuse of the right it grants. For this reason, there has been no shortage of initiatives that seek to at least regulate and limit its use. In 1993, Ukraine raised the possibility of giving the General Assembly the power to override a veto if it was invoked exclusively by a single P5.¹⁶

In 1996, the Non-Aligned Movement (NAM) suggested that the veto be confined to decisions adopted under Chapter VII of the Charter.¹⁷ Mexico made a similar proposal¹⁸ with a view to amending Articles 4, 5, 6, 27, 97, 108 and 109 of the Charter to limit the P5 veto to issues related to Chapter VII, excluding the veto for other issues, such as admission of new members to the U.N., the suspension of rights and privileges of a member State, expulsions from the Organization, the exclusion of Chapters VI, VIII and XII from

¹⁴ Resolution 2623 (2022), S/RES/2623(2022), February 27, 2022, at <https://digitallibrary.un.org/record/3958807> (date of access: June 8, 2023). This resolution is based on General Assembly resolution 377 (V), known as “Uniting for Peace.”

¹⁵ For the decisions that the General Assembly has adopted at this emergency special session, see U.N., “U.N. General Assembly Resolutions Tables,” in Dag Hammarskjöld Library, at <https://research.un.org/en/docs/ga/quick/emergency> (date of access: June 8, 2023).

¹⁶ “Question of equitable representation in the Security Council and increasing the number of its members. Report of the Secretary-General. Addendum,” A/48/264/Add.2, August 27, 1993, pp. 6-8.

¹⁷ “Question of the Veto: Working Paper by Egypt on Behalf of the Movement of Non-Aligned Countries,” A/AC.247/1996/CRP.9, May 20, 1996, para. 11.

¹⁸ “Proposed Amendments to the Charter of the United Nations: The Question of the Veto: Mexico: Working Paper,” A/AC.247/1996/CRP.7, May 13, 1996.

a possible veto, the selection of the Secretary-General, and the entry into force of amendments to the Charter.

In more recent times, initiatives have emerged that seek to limit the veto, not through amendments to the Charter, but rather through political declarations and commitments. These initiatives are, on the one hand, the adoption of a “code of conduct,” proposed by the ACT group (Accountability, Coherence and Transparency Group), which seeks to improve the Council’s working methods. This is a group of 27 States, created in 2013, whose objective is to address the internal functioning of the Council, as well as its relationship with the rest of the membership. To date, this initiative has the support of 123 States.¹⁹

Meanwhile, in 2015, a Franco-Mexican initiative was launched consisting of a political declaration that seeks a “voluntary renunciation” of the P5 to exercise the veto in situations concerning mass atrocities.²⁰ To date, 106 States have signed this declaration. As explained above,²¹ Mexico’s two positions in support of this initiative are the fact that the veto is not a privilege, but a responsibility, and that the institutional arrangements of the United Nations Charter cannot run counter to its object and purpose.

The reality is that the Council’s recent inaction in relation to situations where mass atrocities are being committed has increased pressure to discuss and develop the limits to the use of the veto.²²

¹⁹ See, Permanent Mission of Liechtenstein to the U.N., “List of Signatories to the ACT Code of Conduct,” official document, in Global Center for the Responsibility to Protect, June 8, 2022, at <https://www.globalr2p.org/resources/list-of-signatories-to-the-act-code-of-conduct/> (date of access: June 8, 2023).

²⁰ The text of the declaration is available in “Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities,” official document, in Global Center for the Responsibility to Protect, August 1, 2015, at <https://www.globalr2p.org/resources/political-declaration-on-suspension-of-veto-powers-in-cases-of-mass-atrocities/> (date of access: August 8, 2023).

²¹ See Joel Hernández García, “El Consejo de Seguridad y la iniciativa franco-mexicana para la restricción del uso del veto en caso de atrocidades en masa,” in *Revista Mexicana de Política Exterior*, no. 110, May-August 2017, pp. 45-59, at <https://revistadigital.sre.gob.mx/index.php/rmpe/article/view/287/266> (date of access: June 8, 2023).

²² For a broader study of this topic, see Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*, Cambridge, Cambridge University Press, 2020.

In any case, it is pertinent to remember the words of the U.S. delegate to the U.N. Warren R. Austin, who in 1949 declared: “To insist on the exercise of the veto regardless of its effects on the organized international community and to reject any efforts to regulate its application under the Charter, in the light of experience, it to stand in the way of effective progress by the United Nations.”²³

The relentless pursuit of accountability to the General Assembly: Resolution 76/262

The frequent paralysis of the Council in the face of shocking situations, such as the case of Syria, combined with the increase in the use or threat of use of the veto, led a group of like-minded States to work on a proposal for a possible draft resolution of the General Assembly to address the issue: the so-called “veto initiative.” Mexico participated in this effort from the outset.

Although the draft resolution had begun to take shape several years earlier, the consultation process was impacted by the COVID-19 pandemic. After a bilateral meeting between the permanent representative of Liechtenstein and the co-authors of this text, held in early 2022, the draft resolution was reactivated and, in February of that year, the core group was made up of Costa Rica, El Salvador, Estonia, Ireland, Liechtenstein, Mexico, New Zealand, Qatar, Sweden and Türkiye.

Meanwhile, the day after Russia began its war of aggression against Ukraine, Albania and the United States, with the co-sponsorship of 81 delegations, presented draft resolution S/2022/155 to the Council, which was vetoed by Russia. This situation accelerated the progress of the initiative, which was proposed as a draft resolution entitled “Standing Mandate for a General Assembly debate when a veto is cast in the Security Council.” On April 26, 2022, the General Assembly adopted, by consensus, resolution 76/262²⁴ with 83 cosponsors that included the P3. The resolution creates

²³ Statement by Warren R. Austin of April 13, 1949, cited in B. Fassbender, *op. cit.*, p. 340.

²⁴ “Standing Mandate for a General Assembly Debate when a Veto is Cast in the Security Council,” A/RES/76/262, April 28, 2022, at <https://digitallibrary.un.org/record/3971417> (date

a mandate by which the presidency of the Assembly must convene an official session of the Assembly within ten business days following the use of a veto by one or more of the P5, in order to “hold a debate on the situation as to which the veto was cast.” At this session, the permanent member(s) who issued the veto are invited to explain their reasons and the Security Council is also invited to present a special report to the General Assembly on the use of the veto in question.

A month after its adoption, on May 26, 2022, the aforementioned double veto by China and Russia regarding the DPRK occurred. This activated the mechanism established in resolution 76/262 for the first time. Less than two months later, Russia vetoed the draft resolution seeking to renew the Bab Al-Hawa border crossing between Syria and Türkiye. In both cases, the States responsible for the veto went to the General Assembly, in accordance with the terms of resolution 76/262.

These examples and the other General Assembly sessions that have taken place on the basis of resolution 76/262 have shown that there is room for greater accountability from the Council to the Assembly when a veto is cast. This has had the not insignificant effect of reactivating the demand of all member states to seek practical ways to contain the use of the veto, and has brought renewed impetus to the discussions on the reform of the Security Council, while at the same time increasing the political cost to the P5 of resorting to the veto.

The unavoidable reform of the Security Council

The above considerations would be sufficient reason to produce incentives for a fundamental reform of the Council, both in relation to its size and composition, and with regard to its working methods, starting with the veto. It is clear, however, that the conditions established by the Charter of the United Nations to successfully carry out a reform of this magnitude

of access: June 8, 2023); see also Pablo Arrocha Olabuenaga, “GA Res. 76/262 on a Standing Mandate for a General Assembly Debate when a Veto is Cast in the Security Council (U.N.),” in *International Legal Materials*, vol. 62, no. 2, April 2023, pp. 284-288.

make it unlikely that the P5—each for their own reasons—would agree to restrict or abolish the extraordinary power that the Charter confers them through the veto. This power also extends to any amendment to the Charter of the Organization, as established in its Article 108.²⁵

In fact, it is enough for just one of the P5 not to ratify the amendments that are agreed upon in the General Assembly, for any such reform not to come into force. In this way, the system is carefully rigged to ensure that the victors of the Second World War hold the final say and retain full control over the future of the Organization, at least in the formal aspect of its institutional framework. This would lead us to think that the negotiation of any reform would, at bottom, be reduced to the decision of the five, and that the rest of the member States must only seek to convince them, and save themselves any effort at achieving consensus or seeking the two-thirds majority required by the Charter.

The reality is more complex. No reform can come into force without the ratification of each of the P5. That is indisputable. But it is also true that the only reform that the Council has undergone, the result of two amendments to the San Francisco Charter, was adopted in the General Assembly *without the support* of all the P5, although in the end all five ratified them.²⁶ Therefore, it is plausible to think that the Assembly could decide on a reform, even without the support of any of the permanent members, but that the reform does end up coming into force, since the political cost of not supporting it would be even higher for the P5.

This allows us to understand why the role of all member States is of such importance. It is not unreasonable to believe they have the capacity to promote and achieve the approval of a reform, even against the P5, and hope that time does its work to achieve the essential ratifications in the

²⁵ Article 108 provides that any amendment to the Charter must, in order to enter into force, be ratified by all the P5.

²⁶ In 1963, the General Assembly adopted resolution 1991(xviii)[A] amending the Charter to increase the number of non-permanent member seats from 6 to 10. This resolution was adopted by 97 votes in favor, 11 against and 4 abstentions. The States that voted against were: Bulgaria, Belarus, Cuba, Czechoslovakia, *France*, Hungary, Mongolia, Poland, Romania, Ukraine and the *USSR*. The States that abstained were: Portugal, South Africa, *United Kingdom* and *United States*. On August 31, 1965, these amendments came into force, and the *USSR* was the first country, among the P5, to ratify them.

end. That has been the logic underlying the efforts of those who have been fighting for a reform of the Council for more than four decades, seeking to build the necessary majority in the General Assembly and only worry about each of the P5 once the reform is approved.

This hypothesis has its limitations, since it does not account for the all-embracing power of the P5. Their exorbitant power derives, disproportionately, from their status as permanent members. Behind this permanence is the control they exercise over the working methods of the Council, and in general over its *modus operandi*—both of the Council and of the U.N. as a whole. In short, the five have a monopoly on the functioning of the subsidiary bodies, and decisions of great importance depend on them, such as the establishment of peace operations—which they predominantly pay for—as well as countless missions of the Organization.

As if that were not enough, with some exceptions over time, the five have practically become permanent members of other main bodies of the United Nations, such as the board of directors of the General Assembly, the Economic and Social Council (ECOSOC) and its functional commissions, and the ICJ. Even when expert bodies composed of individuals who do not represent their States are established, spaces are *de facto* reserved for the P5, as is the case for most expert panels of the Council's sanctions regimes. Likewise, the five appear on the executive bodies of the specialized agencies of the U.N. System, and on the governing bodies of countless funds and programs.

Despite this situation of concentration of power that translates into an asymmetrical governance system that does not take into account the plurality and diversity of an international community made up of 193 States, a significant proportion of the member States advocate a reform of the Security Council that foresees the addition of more permanent seats (with or without veto), under the argument that the United Nations of today must reflect the geopolitical realities of the present, and abandon an institutional design based on the prevailing balance of power in 1945.

Reasons for reform and factors of negotiation

Some years after the aforementioned reform of 1963 was agreed upon, by virtue of which the Security Council was expanded from 11 to 15 mem-

bers to make it more representative of an Organization that had grown from its 51 founding States to more than 150, in 1979 “the question of equitable representation in the Security Council and the increase in the number of its members and other matters relating to the Security Council” were entered on the agenda of the General Assembly. But the issue was not really debated.

In 1993,²⁷ an open-ended working group of the General Assembly was established but failed to make substantive progress and was replaced in 2008 by an informal intergovernmental negotiations (IGN) process that is now the applicable forum to discuss this matter.

As for the reasons that make a reform of the Council more than desirable, the following is of note. The Council, currently composed of 15 members, is not representative of the plural and diverse membership of 193 States. Furthermore, 60 member states have never been elected to the Security Council. For example, small island developing States and other small States, which constitute more than a quarter of all member States, have little chance of becoming elected members of the Council compared to more powerful States.

The Security Council is a supranational body whose decisions are binding on all U.N. member States and, therefore, must be of a size and employ working methods that do not affect its ability to act with the required urgency, in order to comply with the primary responsibility entrusted to it by the United Nations Charter.²⁸

The permanent nature of the seats occupied by the five victors of the Second World War is the first obstacle to the democratization of the Security Council and, to a certain extent, also to the transparency of its actions. The addition of more permanent members, contrary to the principle of legal equality of States, would only lead to an aggravation of this situation, regardless of which States aspire to become permanent members.

²⁷ General Assembly, “Question of Equitable Representation on and Increase in the Membership of the Security Council,” A/RES/48/26, December 3, 1993, at <https://digitallibrary.un.org/record/177987> (date of access: June 8, 1993).

²⁸ Chapter VI (Pacific Settlement of Disputes) and Chapter VII (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression).

Only through periodic elections in the General Assembly can States wishing to serve for a long time on the Council be held accountable for their performance during the mandate conferred upon them. The asymmetry *vis-à-vis* the P5 must also be compensated: two years are insufficient to sustainably influence the work of the Council.

Finally, it is necessary to correct the underrepresentation of developing countries: Africa has been the victim of a historical injustice, since the rights of its peoples were not taken into consideration in the creation of the United Nations, which took place prior to decolonization.

It follows from the above that the reform of the Security Council should not be limited to modifying its size and composition. In order for the reform to respond to the aforementioned shortcomings and to be lasting, it must cover other issues such as working methods, the relationship of the Council with the General Assembly, and the question of the veto, among others.

Mexico holds the position that the importance of such a reform makes it desirable that it emerge from the consensus of the member States or the broadest possible acceptance, particularly in order to increase the likelihood of it coming into force and enjoying a level of legitimacy that ensures its lasting character.

At the initiative of Mexico, in 1998 the General Assembly agreed that “no resolution or decision” in this regard could be adopted “without the affirmative vote of at least two thirds of the members of the General Assembly,” which means that abstentions or absences do not count for such purposes, making it *necessary* that at least 128 member States out of a total of 193 must vote.²⁹ Something that is not always taken into account in any reform of the Charter is the need for it to be considered and, where appropriate, approved by the legislative powers of the member States. In that sense, the chances of ratification of a reform will be higher the broader the agreement reached in the General Assembly.

²⁹ “Question of Equitable Representation on and Increase in the Membership of the Security Council and Related Matters,” A/RES/53/30, December 1, 1998. This resolution interprets Article 108 of the Charter and Articles 81, 83, 84, 85 and 86 of the Rules of Procedure and Comments of the General Assembly.

Two conflicting visions: Is there room for an intermediate solution?

Over the course of the debates and negotiations held in the General Assembly and in the intergovernmental negotiations that have taken place since 2008, there have been many points of convergence between the different negotiating groups. This is the case, for example, with regard to improving the Council's working methods through the adoption of measures that do not necessarily entail reforms to the Council's Rules of Procedure, much less to the Charter of the United Nations.

The same could be said for the size of a reformed Council, which most believe revolves around a number between 20 and 26, with a preference among several permanent members for a number closer to 20 than 26.

However, the Gordian knot of the reform is the question of the categories of new members, namely, whether or not the creation of new seats should include permanent seats or only non-permanent members, that is, members elected by the General Assembly.

The group of four (G4),³⁰ as well as a number of other States from all regions, clearly seek that any such reform include the creation of new seats in both categories, and the former has asserted that its members have the credentials to aspire to occupy a permanent seat.

For Germany and Japan it is a broader matter of being recognized as two peace-loving States committed to the principles and purposes of the United Nations, leaving behind their status as countries defeated in 1945. Germany has even proposed that the new permanent members be subject to periodic review, with the possibility of being replaced by others if the General Assembly deems it appropriate in light of their performance, thus advocating a "flexible" scheme of new permanent members.³¹

³⁰ G4: Germany, Brazil, India and Japan.

³¹ "Periodic Review Clause: Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council: Working Paper/Germany," A/AC.247/1996/CRP.15/Rev.1, July 3, 1996.

India and Brazil, on the other hand, aspire to achieve a status on par with their specific weight in the world, one that recognizes their important contributions to the work of the Organization. South Africa also falls into this last category, although with the additional argument that Africa should be compensated for the historical injustice of not having been considered in the institutional design of 1945. For this reason, and perhaps also to avoid triggering competition within the continent to be anointed as a candidate to occupy a permanent seat, the African Union has adopted, since 2005, a maximalist position that consists of demanding two permanent seats with the right of veto, until such time as it is abolished. As a result, the common African position, embodied in the Ezulwini Consensus³² and the Sirte Declaration,³³ has contributed to maintaining the *status quo* in the negotiations on Council reform.

The position of the P5 does not appear to be homogeneous. China advocates for greater representation of developing countries and changes in working methods. The United States, France and the United Kingdom are in favor of an expansion in both categories and have given more or less explicit support to one or more G4 candidates. Russia maintains that it is open to considering various models of reform, but does not favor the addition of more members of the Western group, as it considers that this group is overrepresented in the Council.

Opposed to those who advocate a reform that contemplates the creation of more permanent seats, the Uniting for Consensus (UfC) movement³⁴ shares the general position of seeking a reform of the Security Council, but only by the addition of non-permanent members, elected by the General Assembly for limited periods, without the right of veto, although with

³² African Union, "The Common African Position on the Proposed Reform of the United Nations: 'The Ezulwini Consensus'," Ext/EX.CL/2 (VII), Addis Ababa, March 8, 2005, at <http://old.centerforunreform.org/sites/default/files/Ezulwini%20Consensus.pdf> (date of access: June 8, 2023).

³³ Unión Africana, Sirte Declaration, July 14, 1999, at https://archives.au.int/bitstream/handle/123456789/10157/1999_Sirte%20_Decl_%20E.pdf (date of access: June 8, 2023).

³⁴ Composed of Argentina, Canada, Colombia, Costa Rica, Italy, Malta, Mexico, Pakistan, Republic of Korea, San Marino, Spain and Türkiye. China and Indonesia are observers in this group.

the possibility of being re-elected immediately. A reform of this nature also requires amendments to several provisions³⁵ of the Charter of the United Nations and the amendment procedure would be governed, in the same way, by the provisions of its Article 108.

Too much time has passed without the IGN being able to bring about the convergences needed to envision the outlines of a reform that—as our most recent experience in the Security Council has only served to convince us even further—cannot be postponed. The abuse of the veto or the threat of doing so, combined with the defects inherent in having five permanent members, and of course, the lack of representativeness of a body of only 15 members, calls into question the ability of the Council to comply with the mandate entrusted to it by the United Nations Charter. In short, the reform cannot wait any longer, or it risks condemning the collective security system to ever-increasing irrelevance.

The new Mexican proposal

The above considerations led Mexico, having just concluded its mandate as an elected member of the Security Council, to put forward a proposal³⁶ that is inspired by the common position of the UfC, but which incorporates a series of elements that had not been shared by all the member States, with the aim of reactivating the IGN negotiations in fulfillment of the will of the General Assembly, on the occasion of the 75th anniversary of the United Nations.³⁷

³⁵ Article 23, paragraphs 1 and 2, and Article 27, paragraphs 2 and 3.

³⁶ Mexico circulated a proposal for negotiations on the reform of the Security Council. See the document “A Mexican Proposal for Negotiations on the Security Council Reform,” A/77/717, January 27, 2023, at <https://digitallibrary.un.org/record/4002444> (date of access: June 8, 2023). This proposal is based on the common position of the UfC, although it uses specific definitions that draw on our own convictions and experience.

³⁷ See paragraph 14 of resolution 75/1 adopted on September 21, 2020, by which the General Assembly approved the *Declaration on the commemoration of the 75th anniversary of the United Nations*.

Mexico's proposal can be summarized as follows:

- I. Size: create 10 new elective positions, to be added to the existing 10, creating a reformed Council of 25 members.

- II. Long-term elective positions and their regional distribution: of the 20 elected members, eight would correspond to long-term positions, that is, for a period of four years instead of two, with the possibility of immediate re-election for another period of four years. Members serving two consecutive terms would be members of the Security Council for a total of eight years, and would not be eligible for any other elective position for a period of four years.³⁸ These eight long-term elective positions would be distributed among the regional groups as follows:
 - i. Three for the African Group.
 - ii. Two for the Asia and the Pacific Group.
 - iii. Two for the Latin America and Caribbean Group.
 - iv. One for the Western European and Others Group.

- III. Elective positions for a period of two years: the number of members elected for two years would be increased from 10 to 12. In order to benefit the aforementioned underrepresented groups, the two additional seats would be distributed as follows:
 - i. One reserved for Small Island Developing States and other small States.
 - ii. One for the Eastern European Group.

³⁸ This rule is inspired by that established in General Assembly resolution 60/251, operative paragraph 7, of March 15, 2006, regarding the number of consecutive terms permitted for members of the Human Rights Council. In addition to preventing any State from becoming a *de facto* permanent member, the proposed four-year recess requirement is about ensuring that all States are subject to the periodic scrutiny of the General Assembly.

- IV. Decision-making: substantive decisions of the Council would require the affirmative vote of at least 15 members, including the affirmative votes of the P5.³⁹ This issue, due to its complexity and significance, is the subject of the first part of this article, since it constitutes an essential part of any reform to the Council.

Conclusion

Time will tell if the reasons and arguments that Mexico has put forward can contribute to the functioning of the collective security system, in accordance with the principles and purposes of the United Nations Charter. Yet our actions have been guided by the ever-greater risks of completely marginalizing the Organization from actions aimed at preventing threats to peace, in accordance with the tradition of a country committed to multilateralism.

In addition to the above, Mexico's record accredits it as a responsible global actor, with a series of achievements that allows it to propose solutions that are agreeable to the majority, and whose interests lie in strengthening a world order governed by international law.

Our most recent participations in the Security Council as an elected member, especially that of the 2021-2022 period, have reaffirmed and nourished our convictions and have wholly dismissed any viewpoint in favor of passivity or inaction. The voice of Mexico is a factor of peace. Our experience as a nation demands this of us.

³⁹ Respecting the proportion set out in Article 27, paragraph 3, of the Charter of the United Nations.